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PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Schomacker et al. CONFIRMATION NO.: 7328
SERIAL NO.: 10/848,735 GROUP NO.: 2884
FILING DATE: May 19, 2004 EXAMINER: Sung, Christine
TITLE: METHOD AND APPARATUS FOR IDENTIFYING SPECTRAL ARTIFACTS

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FOR USE OF COLOR PHOTOGRAPHS AND COLOR DRAWINGS AS FORMAL DRAWINGS UNDER 37 C.F.R. § 1.84(a)(2) AND (b)(2)

Applicants submit this petition to request acceptance of color photographs and color drawings as formal drawings in the above-referenced U.S. patent application. As required under 37 C.F.R. § 1.84(a)(2) and (b)(2), Applicants herein include:

- an explanation regarding why the color drawings are necessary;
- an explanation regarding why the color photographs are necessary;
- the fee set forth in § 1.17(h);
- three (3) sets of color drawings;
- three (3) sets of color photographs;

The paragraph required by § 1.84(a)(2)(iii) is already present in the Brief Description of the Drawings section of the Specification of the above-referenced U.S. patent application.

1. Explanation regarding why the color drawings are necessary: Color drawings appear in FIG. 7A, FIG. 7B, FIG. 7C, FIG. 11B, FIG. 12B, FIG. 13B, AND FIG. 14B of the above-referenced application. These drawings include (i) plots where the colors represent data value gradations that could not be practically represented without the use of color and (ii) scan pattern representations, where the colors indicate data values corresponding to a

large number of spatially-oriented regions. More specifically, category (i) includes FIGS. 7A, 7B, and 7C, and category (ii) includes FIGS. 11B, 12B, 13B, and 14B. Alternative presentation of the above-listed drawings in black and white is impractical. Thus, Applicants respectfully submit that color drawings are the only practical medium by which to disclose in a printed utility patent the subject matter to be patented, and therefore, the color drawings should be permitted for use as formal drawings.

2. Explanation regarding why the color photographs are necessary: Color photographs appear in FIG 11A, FIG. 12A, FIG. 13A, AND FIG. 14A of the above-referenced application. These color photographs include depictions of *in vivo* cervical tissue.

37 C.F.R. § 1.84(b)(2) states that color photographs will be accepted in utility patent applications if the conditions for accepting color drawings [§ 1.84(a)(2)] and black and white photographs [§ 1.84(b)(1)] are satisfied.

37 C.F.R. § 1.84(b)(1) states, “The Office will accept photographs in utility and design patent applications … if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: … *in vivo* imaging … are acceptable.” All the photographs above depict *in vivo* cervical tissue; thus, the requirement for acceptance of black and white photographs is satisfied for these figures.

C.F.R. § 1.84(a)(2) requires that color drawings be necessary, “as the only practical medium by which to disclose the subject matter sought to be patented in a utility or design patent application...” Since the invention comprises methods of processing data from tissue, including color-specific image data, the color photographs above are the only practical medium by which to disclose in a printed utility patent the subject matter to be patented. Applicants also submit that the photos are of sufficient quality so that all details are reproducible in a printed patent. All other requirements of § 1.84(a)(2) are satisfied in this Petition.

Since all items of 37 C.F.R. § 1.84(a)(2)(i)-(iii) and § 1.84(b)(1) are satisfied, then § 1.84(b)(2) is satisfied. Thus, Applicants respectfully request that the color photographs described above be accepted in the aforementioned utility patent application.

3. In accordance with 37 C.F.R. § 1.84(a)(2) and (b)(2), this petition is accompanied by three (3) sets of color drawings and three (3) sets of color photographs.
4. In accordance with § 1.84(a)(2) and (b)(2) and § 1.17(h), this petition is accompanied by a check for the petition filing fee of \$130.00. However, should any other fees be required for this petition to be considered, the Commissioner is authorized to charge deposit account number 07-1700.

Applicants submit that all requirements of 37 C.F.R. § 1.84(a)(2) and (b)(2) and § 1.17(h) are satisfied, and Applicants respectfully request that the color drawings and color photographs be accepted as formal drawings in the above-referenced nonprovisional U.S. patent application.

Respectfully submitted,



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